IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

WP(C).No. 32295 of 2006(T)

OS..463/2004 of ADDL.MUNSIFF COURT,KOCHI

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PETITIONERS:

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1. BABU, AGED 53 YEARS,
   S/O.MAKKOTHA, VALATH, NAYARAMBALAM MURI,
   NAYARAMBALAM VILLAGE, KOCHI TALUK.

2. ASOKAN, AGED 44 YEARS,
   S/O.BHAVAKUNJU, NAYARAMBALAM MURI,
   NAYARAMBALAM VILLAGE, KOCHI TALUK.

3. RENUKA, AGED 46 YEARS,
   W/O.BABU, VALATH, NAYARAMBALAM MURI,
   NAYARAMBALAM VILLAGE, KOCHI TALUK.

BY ADV. SRI.DENIZEN KOMATH

RESPONDENT:

SUDHARMA BODHINI LOWER PRIMARY SCHOOL,
NAYARAMBALAM, REPRESENTED BY ITS MANAGER,
SRI.A.C.SWETHASWAN, S/O.CHOKI,
ARAKKAPARAMBIL, WARD NO.XI,
NAYARAMBALAM MURI, NAYARAMBALAM VILLAGE,
KOCHI TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.32295 OF 2006

DATED THIS THE 5th DAY OF DECEMBER, 2006

JUDGMENT

This petition is filed under Article 227 of Constitution of India seeking a direction to Munsiff to pass order in I.A.28/06 filed for appointment of a Commissioner. The suit was originally dismissed for default on 4.1.2006. Petitioners were filed application and get the suit restored later. The grievance of petitioners is that consequent to the dismissal of the suit I.A.28/06 was also dismissed. But it was not restored by learned Munsiff and the case is now posted for pre-trial steps. True, when a suit dismissed for default is restored, the interlocutory orders which have been passed in the suit before the dismissal would stand revived along with the suit, when the dismissal of the suit is set aside and suit is restored, unless the court expressly or by necessary implication excludes the operation of the interlocutory orders passed before

the dismissal as held by the Apex Court in **Vareed Jacob Vs. Sosamma Geevarghese (AIR 2004SC 3992).** Admittedly no order was passed by the Court in I.A.28/06, before the suit was dismissed. Petitioner is at liberty to move the Munsiff to restore that application. If such an application is filed, Munsiff shall restore the application and pass appropriate order in accordance with law.

Writ Petition disposed accordingly.

M.SASIDHARAN NAMBIAR,JUDGE

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